



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

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MEMORANDUM

DATE: April 9, 2015

TO: Family Division Judges
Court Administrators
Probate and Juvenile Registers

FROM: Jodi Latuszek, Management Analyst

RE: Case Transfer Practice

This memo is intended to provide the family division of the circuit court with information about transferring juvenile abuse and neglect and delinquency cases. The [Michigan Court Rules and Case File Management Standards \(CFMS\) Component 11](#) provide the courts with guidance on how to affect case transfers, but that guidance does not include a mandate that the transferring court ensure that the receiving court has properly accepted the transferred case.¹ To prevent unintended delay in juvenile matters, courts should incorporate follow-up into their transfer procedures.

I. Case Transfers Generally

Generally, jurisdiction in a juvenile case is appropriate where the child is found. Specifically, MCL 712A.2 provides that a child is “found within the county” in which the offense against the child occurred, in which the offense committed by the juvenile occurred, or in which the minor is physically present. However, this definition does not always produce a forum that allows a swift and convenient adjudication for the child and the child’s family. Consequently, the court rules authorize transfer to another county in certain instances.² MCR 3.926.

¹ The CFMS provide for confirmation of receipt of documents. Original records are to be sent registered or certified mail, return receipt requested, or electronically. Component 11.

² Although the term “transfer” is used in other jurisdictions to mean transfer from juvenile court to adult court, in Michigan “transfer” simply refers to transferring for purposes of jurisdiction and venue. In Michigan the term “waiver” is used to describe the process by which a juvenile goes from juvenile court to the court of general criminal jurisdiction.

A. Transfer Before Trial

A juvenile case can be transferred to a child's county of residence if the child was found in another county and the transfer is made prior to trial.³ MCR 3.926(B). A county is presumed to be the child's county of residence if it is the county where the child resides with the parent who has been awarded legal custody, the child's guardian, the child's legal custodian, or the child's sole legal parent. If none of those apply, the court should determine the county of residence by considering the following:

- Where does the child's parent, guardian, or legal custodian live?
- Has the child ever lived in the county and, if so, for how long?
- Has either parent moved from the county since the case began?
- Is the child subject to the prior continuing jurisdiction of another court?⁴
- Has a court entered an order placing the child in the county for purposes of adoption?⁵
- Has the child expressed an intention to reside in the county?
- Is there anything else that would make jurisdiction appropriate in this county?

B. Transfer After Trial

Juvenile proceedings may also be bifurcated. For instance, it may be easier to hold an adjudicative hearing in the county where the child was found because there may be more witnesses there and that may be where the investigation leading to the petition occurred. Once the adjudicative phase is over, it is often more convenient to conduct the dispositional phase of a case in the child's county of residence because dispositional orders often include intensive services and parenting time. In such a scenario, judges in the two jurisdictions can reach an agreement to bifurcate the case by holding the adjudication in the county where the child was found or offense occurred and the

³ Although transfers to tribal court are beyond the scope of the memorandum, courts should be aware of [*In re Spears*](#), ___ Mich App ___, ___ NW2d ___ (2015) (Docket No. 320584). In *Spears*, the Court of Appeals held that, under MCL 712B.7(5)(b) a circuit court cannot deny a request to transfer an Indian child custody proceeding to a tribal court based on the timeliness of the request or the effect of transfer on the child's best interests. *Id* at 7. For further analysis on transfers to tribal court, see the full text of the *Spears* opinion.

⁴ This should be noted on the petition. The petitioner is required to provide notice of prior proceedings pursuant to MCR 3.205(C).

⁵ If placement in the county was made by a court order or public or private agency, that placement does not make the child a resident of the county unless the placement is for purposes of adoption. MCR 3.926(B)(3). .

disposition in another county-usually the county of residence.⁶ Although the court rules do not require it, the agreement should be communicated in a manner that conveys mutual understanding. If the judges cannot agree on bifurcation, the case will stay in the county that had original jurisdiction under MCL 712A.2 or the county of residence.

C. Change of Venue for Other Reasons

Change of venue for any other reason than those discussed above must be by court order on motion of a party for either of the following reasons: another forum is more convenient for the parties and the judge of the receiving court has agreed to hear the case; or, the transferring judge determines that an impartial trial cannot be had where the case is currently pending. MCR 3.926(D)(1) and (2).

II. Executing the Transfer

After the transfer decision is made, the transferring court should prepare an Order to Transfer [\[JC29\]](#). The order should be sent to the receiving court along with all of the original pleadings and documents, or certified copies of those documents, without charge. For bifurcated pleadings, the court adjudicating the case shall send any supplemented pleadings and records or certified copies of those records to the court entering the disposition in the case.⁷

Although transfers to county of residence are usually accepted by the receiving court, the rules do not require the receiving court to accept the case. When possible, the transferring court should contact the receiving court to provide notification that the case will be coming. That way any potential problems can be identified and resolved prior to the transfer in order to prevent delay. Further, after the transfer documentation is sent, the transferring court should follow up with the receiving court to ensure that the case has been accepted. This can be done by calling the clerk of the receiving court after the transfer, or by following up with a letter requesting a copy of the JC 29 indicating the receiving court's acceptance of the file.

The result of miscommunication during case file transfer can be far-reaching. If the transferring court has not received notification of acceptance, it should *not* simply assume that the case has been accepted. If the receiving court thinks it has properly rejected a transfer, it will assume the transferring court is handling the case and scheduling hearings accordingly. On the other hand, if the transferring court assumes the receiving court has accepted the case, it will assume that the receiving court is handling the case and scheduling hearings accordingly. Consequently, the case is delayed when neither court schedules a hearing. Until confirmed, the transferring court should assume it still has the case.

⁶ MCR 3.926(E).

⁷ Though costs are outside the scope of this memorandum, please note that if a court other than the county of residence orders disposition it will be responsible for any costs incurred unless (1) the court of the county where the minor resides agrees to pay the costs of disposition or (2) the minor is a state ward under MCL 803.301 and the county of residence withholds consent to transfer. See MCR 3.926(C).

III. Considerations for the Court

Case transfer mishaps do not happen very often, but when they do, major problems arise. Courts should meet with relevant staff to review transfer procedures according to MCR 3.926 and CFMS Component 11. Then, the court should take steps to determine what extra layers of protection it can add to the process to ensure seamless transfers. In developing a procedure, the court may wish to consider:

- What method of communication should be used to discuss whether to bifurcate proceedings?
- Will a record of communication be made? If so, how?
- Which staff member is responsible for following up on transferred files?
- Which staff member is responsible for following up on files received?
- What questions should court staff ask to ensure the court has all of the necessary information about the file before an official acceptance is made?

IV. Conclusion

Ultimately, the court's process for handling transfers must, at a minimum, comply with MCR 3.926. Even if the court does not want to develop a written internal policy for handling transfers, it should ensure that staff members who regularly process case transfers are adequately trained on the applicable court rule and CFMS. The answers to the questions provided above simply inform the process of identifying procedure and will vary from jurisdiction to jurisdiction depending on caseload and staffing issues. Despite such variance, evaluating solutions to transfer troubles before they happen will benefit every jurisdiction.

If you have any questions, please feel free to contact me at latuszekj@courts.mi.gov or 517-373-2451